

SECOND REGULAR SESSION

SENATE BILL NO. 1029

94TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR RUPP.

Read 1st time January 28, 2008, and ordered printed.

TERRY L. SPIELER, Secretary.

4685S.011

AN ACT

To repeal sections 374.202, 374.205, and 374.207, RSMo, and to enact in lieu thereof fifteen new sections relating to the market conduct surveillance act, with penalty provisions.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 374.202, 374.205, and 374.207, RSMo, are repealed
2 and fifteen new sections enacted in lieu thereof, to be known as sections 374.202,
3 374.205, 374.207, 374.900, 374.903, 374.906, 374.909, 374.912, 374.915, 374.918,
4 374.921, 374.924, 374.927, 374.930, and 374.933, to read as follows:

374.202. 1. The purpose of sections 374.202 to 374.207 is to provide an
2 effective and efficient system for examining the **financial** activities, operations,
3 [financial or market] conduct, condition and affairs of all persons transacting the
4 business of insurance in this state and all persons otherwise subject to the
5 jurisdiction of the director. The provisions of sections 374.202 to 374.207 are
6 intended to enable the director to adopt a flexible system of **financial**
7 examinations which directs resources as the director may deem appropriate and
8 necessary for the administration of the insurance related laws of this state.

9 2. As used in sections 374.202 to 374.207, the following terms mean:

10 (1) "Company", any person engaging in or proposing or attempting to
11 engage in any transaction or kind of insurance or surety business and any person
12 or group of persons who may otherwise be subject to the administrative,
13 regulatory or taxing authority of the director;

14 (2) "Department", the department of insurance of this state;

15 (3) "Director", the director of the department of insurance of this state;

16 (4) "Examiner", any individual or firm having been authorized by the

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

17 director to conduct an examination under sections 374.202 to 374.207;

18 (5) "Insurer" has the same meaning as insurer under sections 375.1150
19 to 375.1246, RSMo;

20 (6) "Person", any individual, aggregation of individuals, trust, association,
21 partnership or corporation, or any affiliate thereof.

374.205. 1. (1) The director or any of the director's examiners may
2 conduct [an] a **financial** examination pursuant to sections 374.202 to 374.207
3 of any company as often as the director in his or her sole discretion deems
4 appropriate, but shall, at a minimum, conduct a financial examination of every
5 insurer licensed in this state at least once every five years. In scheduling and
6 determining the nature, scope and frequency of **financial** examinations, the
7 director may consider such matters as the results of financial statement analyses
8 and ratios, changes in management or ownership, actuarial opinions, reports of
9 independent certified public accountants, consumer complaints, and other criteria
10 as set forth in the Examiners' Handbook adopted by the National Association of
11 Insurance Commissioners and in effect when the director exercises discretion
12 pursuant to this section.

13 (2) For purposes of completing an examination of any company pursuant
14 to sections 374.202 to 374.207, the director may examine or investigate any
15 person, or the business of any person, insofar as such examination or
16 investigation is, in the sole discretion of the director, necessary or material to the
17 examination of the company.

18 (3) In lieu of a financial examination pursuant to section 374.207 of any
19 foreign or alien insurer licensed in this state, the director may accept a financial
20 examination report on the company as prepared by the insurance department or
21 other appropriate agency for the company's state of domicile or port-of-entry state
22 until January 1, 1994. After January 1, 1994, such reports may only be accepted
23 if such insurance department or other appropriate agency was at the time of the
24 examination accredited pursuant to the National Association of Insurance
25 Commissioners' Financial Regulation Standards and Accreditation Program or the
26 examination is performed under the supervision of an accredited insurance
27 department or other appropriate agency or with the participation of one or more
28 examiners who are employed by such an accredited state insurance department
29 or other appropriate agency and who, after a review of the examination
30 workpapers and report, state under oath that the examination was performed in
31 a manner consistent with the standards and procedures required by their

32 insurance department or other appropriate agency.

33 2. (1) Upon determining that an examination should be conducted, the
34 director or the director's designee shall issue an examination warrant appointing
35 one or more examiners to perform the examination and instructing them as to the
36 scope of the examination. In conducting the examination, the examiner shall
37 observe those guidelines and procedures set forth in the Examiners' Handbook
38 adopted by the National Association of Insurance Commissioners. The director
39 may also employ such other guidelines or procedures as the director may deem
40 appropriate.

41 (2) Every company or person from whom information is sought, its
42 officers, directors and agents shall provide to the examiners appointed pursuant
43 to subdivision (1) of this subsection timely, convenient and free access at all
44 reasonable hours at its offices to all books, records, accounts, papers, documents
45 and any or all computer or other recordings relating to the property, assets,
46 business and affairs of the company being examined. [The company or person
47 being examined shall provide within ten calendar days any record requested by
48 an examiner during a market conduct examination, unless such company or
49 person demonstrates to the satisfaction of the director that the requested record
50 cannot be provided within ten calendar days of the request.] All policy records for
51 each policy issued shall be maintained for the duration of the current policy term
52 plus two calendar years and all claim files shall be maintained for the calendar
53 year in which the claim is closed plus three calendar years. The officers,
54 directors, employees and agents of the company or person shall facilitate the
55 examination and aid in the examination so far as it is in their power to do
56 so. The refusal of any company, by its officers, directors, employees or agents, to
57 submit to examination or to comply with any reasonable written request of the
58 examiners shall be grounds for suspension or refusal of, or nonrenewal of, any
59 license or authority held by the company to engage in an insurance or other
60 business subject to the director's jurisdiction. Any such proceeding for
61 suspension, revocation or refusal of any license or authority shall be conducted
62 pursuant to section 374.046.

63 (3) The director or any of the director's examiners may issue subpoenas
64 to administer oaths and to examine under oath any person as to any matter
65 pertinent to the examination. Upon the failure or refusal of any person to obey
66 a subpoena, the director may petition a court of competent jurisdiction, and upon
67 proper showing, the court may enter an order compelling the witness to appear

68 and testify or produce documentary evidence. Failure to obey the court order
69 shall be punishable as contempt of court. Such subpoenas may also be enforced
70 pursuant to the provisions of sections 375.881 and 375.1162, RSMo.

71 (4) When making an examination pursuant to sections 374.202 to 374.207,
72 the director may retain attorneys, appraisers, independent actuaries, independent
73 certified public accountants or other professionals and specialists as examiners,
74 the cost of which shall be borne directly by the company which is the subject of
75 the examination.

76 (5) The provisions of sections 374.202 to 374.207 shall not be construed
77 to limit the director's authority to terminate or suspend any examination in order
78 to pursue other legal or regulatory action pursuant to the insurance laws of this
79 state. Findings of fact and conclusions made pursuant to any examination shall
80 be prima facie evidence in any legal or regulatory action.

81 (6) Nothing contained in sections 374.202 to 374.207 shall be construed
82 to limit the director's authority to use and, if appropriate, to make public any
83 final or preliminary examination report, any examiner or company workpapers
84 or other documents, or any other information discovered or developed during the
85 course of any examination in the furtherance of any legal or regulatory action
86 which the director may, in his or her sole discretion, deem appropriate.

87 3. (1) All examination reports shall be comprised of only facts appearing
88 upon the books, records, or other documents of the company, its agents or other
89 persons examined, or as ascertained from the testimony of its officers or agents
90 or other persons examined concerning its affairs, and such conclusions and
91 recommendations as the examiners find reasonably warranted from the facts.

92 (2) No later than sixty days following completion of the examination, the
93 examiner in charge shall file with the department a verified written report of
94 examination under oath. Upon receipt of the verified report, the department
95 shall transmit the report to the company examined, together with a notice which
96 shall afford the company examined a reasonable opportunity of not more than
97 thirty days to make a written submission or rebuttal with respect to any matters
98 contained in the examination report.

99 (3) Within thirty days of the end of the period allowed for the receipt of
100 written submissions or rebuttals, the director shall fully consider and review the
101 report, together with any written submissions or rebuttals and any relevant
102 portions of the examiner's workpapers and either initiate legal action or enter an
103 order:

104 (a) Adopting the examination report as filed or with modification or
105 corrections. If the examination report reveals that the company is operating in
106 violation of any law, regulation or prior order of the director, the director may
107 order the company to take any action the director considers necessary and
108 appropriate to cure such violation;

109 (b) Rejecting the examination report with directions to the examiners to
110 reopen the examination for purposes of obtaining additional data, documentation
111 or information, and refiling pursuant to subsection 1 of this section;

112 (c) Calling for an investigatory hearing with no less than twenty days'
113 notice to the company for purposes of obtaining additional documentation, data,
114 information and testimony; or

115 (d) Calling for such regulatory action as the director deems appropriate,
116 provided that this order shall be a confidential internal order directing the
117 department to take certain action.

118 (4) All orders entered pursuant to paragraph (a) of subdivision (3) of this
119 subsection shall be accompanied by findings and conclusions resulting from the
120 director's consideration and review of the examination report, relevant examiner
121 workpapers and any written submissions or rebuttals. Any such order shall be
122 considered a final administrative decision and may be appealed pursuant to
123 section 536.150, RSMo, and shall be served upon the company by certified mail,
124 together with a copy of the adopted examination report. Within thirty days of the
125 issuance of the adopted report, the company shall file affidavits executed by each
126 of its directors stating under oath that they have received a copy of the adopted
127 report and related orders. Any hearing conducted pursuant to paragraph (c) of
128 subdivision (3) of this subsection by the director or authorized representative
129 shall be conducted as a nonadversarial confidential investigatory proceeding as
130 necessary for the resolution of any inconsistencies, discrepancies or disputed
131 issues apparent upon the face of the filed examination report or raised by or as
132 a result of the director's review of relevant workpapers or by the written
133 submission or rebuttal of the company. Within twenty days of the conclusion of
134 any such hearing, the director shall enter an order pursuant to paragraph (a) of
135 subdivision (3) of this subsection. In conducting a hearing pursuant to paragraph
136 (c) of subdivision (3) of this subsection:

137 (a) The director shall not appoint an examiner as an authorized
138 representative to conduct the hearing. The hearing shall proceed expeditiously
139 with discovery by the company limited to the examiner's workpapers which tend

140 to substantiate any assertions set forth in any written submission or
141 rebuttal. The director or his or her representative may issue subpoenas for the
142 attendance of any witnesses or the production of any documents deemed relevant
143 to the investigation whether under the control of the department, the company
144 or other persons. The documents produced shall be included in the record, and
145 testimony taken by the director or his or her representative shall be under oath
146 and preserved for the record. The provisions of this section shall not require the
147 department to disclose any information or records which would indicate or show
148 the existence of any investigation or activity of a criminal justice agency; and

149 (b) The hearing shall proceed with the director or his or her
150 representative posing questions to the persons subpoenaed. Thereafter, the
151 company and the department may present testimony relevant to the
152 investigation. Cross-examination shall be conducted only by the director or the
153 director's representative. The company and the department shall be permitted
154 to make closing statements and may be represented by counsel of their choice.

155 (5) Upon the adoption of the examination report pursuant to paragraph
156 (a) of subdivision (3) of this subsection, the director shall continue to hold the
157 content of the examination report as private and confidential information for a
158 period of ten days except to the extent provided in this subdivision. Thereafter,
159 the director may open the report for public inspection so long as no court of
160 competent jurisdiction has stayed its publication. Nothing contained in the
161 insurance laws of this state shall prevent or be construed as prohibiting the
162 director from disclosing the content of an examination report, preliminary
163 examination report or results, or any matter relating thereto, to the insurance
164 department of this or any other state or country, or to law enforcement officials
165 of this or any other state or agency of the federal government at any time, so long
166 as such agency or office receiving the report or matters relating thereto agrees in
167 writing to hold it confidential and in a manner consistent with this section. In
168 the event the director determines that legal or regulatory action is appropriate
169 as a result of any examination, he or she may initiate any proceedings or actions
170 as provided by law.

171 4. All working papers, recorded information, documents and copies thereof
172 produced by, obtained by or disclosed to the director or any person in the course
173 of an examination made pursuant to this section shall be given confidential
174 treatment and are not subject to subpoena and may not be made public by the
175 director or any other person, except to the extent provided in subdivision (5) of

176 subsection 3 of this section. Access may also be granted to the National
177 Association of Insurance Commissioners. Such parties shall agree in writing
178 prior to receiving the information to provide to it the same confidential treatment
179 as required by this section, unless the prior written consent of the company to
180 which it pertains has been obtained.

374.207. 1. No examiner may be appointed by the director if such
2 examiner, either directly or indirectly, has a conflict of interest or is affiliated
3 with the management of or owns a pecuniary interest in any person subject to
4 examination under sections 374.202 to 374.207 **and sections 374.900 to**
5 **374.933**. This subsection shall not be construed to automatically preclude an
6 examiner from being:

- 7 (1) A policyholder or claimant under an insurance policy;
- 8 (2) A grantor of a mortgage or similar instrument on the examiner's
9 residence to a regulated entity if done under customary terms and in the ordinary
10 course of business;
- 11 (3) An investment owner in shares of regulated diversified investment
12 companies; or
- 13 (4) A settlor or beneficiary of a blind trust into which any otherwise
14 impermissible holdings have been placed.

15 Notwithstanding the requirement of this subsection, the director may retain from
16 time to time, on an individual basis, qualified actuaries, certified public
17 accountants, or other similar individuals who are independently practicing their
18 professions, even though said persons may from time to time be similarly
19 employed or retained by persons subject to examination under sections 374.202
20 to 374.207 **and sections 374.900 to 374.933**.

21 2. Expenses and costs of examinations shall be paid as set forth in section
22 374.160.

23 3. The director, the director's authorized representatives or any examiner
24 appointed by the director shall have such official immunity as exists at common
25 law.

374.900. 1. Sections 374.900 to 374.933 shall be known and may
2 **be cited as the "Market Conduct Surveillance Act".**

3 **2. As used in sections 374.900 to 374.933 the following terms**
4 **mean:**

- 5 (1) **"Complaint", a written or documented oral communication to**
6 **the division of consumer affairs primarily expressing a grievance,**

7 meaning and expression of dissatisfaction. For health companies, a
8 grievance is a written complaint submitted by or on behalf of a covered
9 person;

10 (2) "Comprehensive market conduct examination", a review of
11 one or more lines of business of an insurer domiciled in this state that
12 is not conducted for cause. The term includes a review of rating, tier
13 classification, underwriting, policyholder service, claims, marketing
14 and sales, producer licensing, complaint handling practices, or
15 compliance procedures and policies;

16 (3) "Department", or "insurance department", the department of
17 insurance, financial and professional registration;

18 (4) "Desk examination", a targeted examination that is conducted
19 by an examiner at a location other than the insurer's premises. A desk
20 examination is usually performed at the department's offices with the
21 insurer providing requested documents by hard copy, microfiche, discs,
22 or other electronic media, for review;

23 (5) "Director", the director of the department of insurance,
24 financial and professional registration;

25 (6) "Insurance compliance audit", a voluntary, internal
26 evaluation, review, assessment, audit, or investigation for the purpose
27 of identifying or preventing noncompliance with, or promoting
28 compliance with laws, regulations, orders, or industry or professional
29 standards, which is conducted by or on behalf of an insurer or other
30 company licensed or regulated under the laws of Missouri, or which
31 involves activity regulated under this chapter;

32 (7) "Insurance compliance self-evaluative audit document",
33 documents prepared as a result of or in connection with an insurance
34 compliance audit. An insurance compliance self-evaluative audit
35 document may include a written response to the findings of an
36 insurance compliance audit. An insurance compliance self-evaluative
37 audit document may include, but is not limited to, as applicable, field
38 notes and records of observations, findings, opinions, suggestions,
39 conclusions, drafts, memoranda, drawings, photographs, exhibits,
40 computer generated or electronically recorded information, phone
41 records, maps, charts, graphs, and surveys, provided this supporting
42 information is collected or developed for the primary purpose and in
43 the course of an insurance compliance audit;

44 (8) "Insurer", any insurance company, reciprocal exchange,
45 fraternal benefit society, and any other legal entity engaged in the
46 business of insurance, including health services corporations and
47 health maintenance organizations;

48 (9) "Market analysis", a process whereby market conduct
49 surveillance personnel collect and analyze information from filed
50 schedules, surveys, required reports and other sources in order to
51 develop a baseline and to identify patterns or practices of insurers
52 licensed to do business in this state that deviate significantly from the
53 norm or that may pose a potential risk to the insurance consumer;

54 (10) "Market conduct action", any of the full range of activities
55 that the director may initiate to assess the market and practices of
56 individual insurers, beginning with market analysis and extending to
57 targeted examinations. The director's activities to resolve an
58 individual consumer complaint or other reports of a specific instance
59 of misconduct are not market conduct actions for the purposes of
60 sections 374.900 to 374.933;

61 (11) "Market conduct examination", the examination of the
62 insurance operations of an insurer licensed to do business in this state
63 in order to evaluate compliance with the applicable laws and
64 regulations of this state. A market conduct examination may be either
65 a comprehensive examination or a targeted examination. A market
66 conduct examination conducted under sections 374.900 to 374.933 is
67 separate and distinct from a financial examination of an insurer
68 performed under section 374.205, but may be conducted at the same
69 time;

70 (12) "Market conduct surveillance personnel", those individuals
71 employed or contracted by the director to collect, analyze, review, or
72 act on information on the insurance marketplace, which identifies
73 pattern or practices of insurers;

74 (13) "National Association of Insurance Commissioners" or
75 "NAIC", the organization of insurance regulators from the fifty states,
76 the District of Columbia, and the four United States territories;

77 (14) "NAIC market conduct uniform examination procedures", the
78 set of guidelines developed and adopted by the NAIC designed to be
79 used by market conduct surveillance personnel in conducting an
80 examination;

81 (15) "NAIC Market of Regulation Handbook", a handbook,
82 developed, adopted by the NAIC, or successor product, which:

83 (a) Outlines elements and objectives of market analysis and the
84 process by which states can establish and implement market analysis
85 programs; and

86 (b) Sets up guidelines that document established practices to be
87 used by market conduct surveillance personnel in developing and
88 executing an examination;

89 (16) "NAIC standard data request", the set of field names and
90 descriptions developed and adopted by the NAIC for use by market
91 conduct surveillance personnel in an examination;

92 (17) "On-site examination", a targeted examination conducted at
93 the insurer's home office or the location where the records under
94 review are stored;

95 (18) "Targeted examination", a focused exam conducted for cause,
96 based on the results of market analysis indicating the need to review
97 either a specific line of business or specific business practices,
98 including but not limited to underwriting and rating, marketing and
99 sales, complaint handling operations or management, advertising
100 materials, licensing, policyholder services, non-forfeitures, claims
101 handling, or policy forms and filings. A targeted examination may be
102 conducted by desk examination or by an on-site examination;

103 (19) "Third party model or product", a model or product provided
104 by an entity separate from and not under direct or indirect corporate
105 control of the insurer using the model or product.

374.903. 1. The director shall be the representative for this state
2 in the National Association of Insurance Commissioners and shall
3 contribute to the development and utilization of uniform standards and
4 procedures for market analysis and market conduct actions.

5 2. The director is responsible for conducting market conduct
6 examinations for Missouri policyholder protection, which shall be
7 accomplished by comprehensive or targeted examinations of domestic
8 insurers and targeted examinations of foreign insurers as deemed
9 necessary by the director, based on the results of market analysis. The
10 director may delegate responsibility for conducting an examination of
11 a domestic insurer, foreign insurer, or an affiliate of an insurer to the
12 insurance commissioner of another state if that insurance

13 commissioner agrees to accept the delegated responsibility for the
14 examination.

15 3. The director may delegate such responsibility to a
16 commissioner of a state in which the domestic insurer, foreign insurer,
17 or affiliate has a significant number of policies or significant premium
18 volume.

19 4. If the director elects to delegate responsibility for examining
20 an insurer, the director shall accept a report of the examination
21 prepared by the commissioner to whom the responsibility has been
22 delegated.

23 5. In lieu of conducting a market conduct examination of an
24 insurer, the director shall accept a report of a market conduct
25 examination on such insurer prepared by the insurance commissioner
26 of the insurer's state of domicile or another state, provided:

27 (1) The laws of that state applicable to the subject of the
28 examination are deemed by the director to be substantially similar to
29 those of this state;

30 (2) The examining state has a market conduct surveillance
31 system that the director deems comparable to the market conduct
32 surveillance system required under sections 374.900 to 374.933; and

33 (3) The examination from the other state's commissioner has
34 been conducted within the past three years.

35 6. If the insurance commissioner to whom the examination
36 responsibility was delegated under subsection 1 of this section or the
37 report of a market conduct examination prepared by the insurance
38 commissioner of another state under subsection 5 of this section, did
39 not evaluate the specific area or issue of concern to the director or a
40 specific requirement of Missouri law, the director may pursue a
41 targeted examination or market analysis of the unexamined area under
42 this section.

43 7. The director's determination under subsection 5 of this section
44 is discretionary with the director and is not subject to appeal.

45 8. Subject to a determination under subsection 5 of this section,
46 if a market conduct examination conducted by another state results in
47 a finding that an insurer should modify a specific practice or
48 procedure, the director shall accept documentation that the insurer has
49 made a similar modification in this state, in lieu of initiating a market

50 conduct action or examination related to that practice or procedure. In
51 order to protect the interests of consumers, policyholders, and
52 claimants of this state, the director may initiate such other
53 enforcement action as is necessary to assure compliance with the laws
54 and regulations of this state. The director may require other or
55 additional practice or procedure modifications as are necessary to
56 achieve compliance with specific state laws or regulations, which differ
57 substantially from those of the state that conducted the examination.

374.906. 1. The director shall gather information from data
2 currently available to the department, as well as surveys and required
3 reporting requirements, information collected by the NAIC and a
4 variety of other sources in both the public and private sectors, and
5 information from within and outside the insurance industry from
6 objective sources, information from web sites for insurers, agents, and
7 other organizations and information from other sources, provided the
8 sources are published at least annually in a bulletin or circular, prior
9 to use.

10 (1) Such information shall be analyzed in order to develop a
11 baseline understanding of the marketplace and to identify for further
12 review insurers or practices that deviate significantly from the norm
13 or that may pose a potential risk to the insurance consumer. The
14 director shall use the NAIC Market Analysis Handbook as one resource
15 in performing this analysis, or procedures, adopted by regulation, that
16 are substantially similar to the foregoing NAIC product.

17 (2) Unless found to be unreasonable, the director shall adopt by
18 rule and use the NAIC Market Analysis Handbook or such other
19 procedures that are substantially similar as a guide in performing this
20 analysis. The director may adopt by rule, other procedures, that are
21 substantially similar to the foregoing NAIC product.

22 (3) The director shall use the following policies and procedures
23 in performing the analysis required under this section:

24 (a) Identify key lines of business for systematic review;

25 (b) Identify companies for further analysis based on available
26 information.

27 2. If the analysis compels the director to inquire further into a
28 particular insurer or practice, the following continuum of market
29 conduct actions may be considered prior to conducting a targeted, on-

30 site market conduct examination. The action selected shall be made
31 known to the insurer in writing. These actions may include, but are
32 not limited to:

- 33 (1) Correspondence with insurer;
- 34 (2) Insurer interviews;
- 35 (3) Information gathering;
- 36 (4) Policy and procedure reviews;
- 37 (5) Interrogatories;
- 38 (6) Review of insurer self-evaluation, if not subject to a privilege
39 of confidentiality, and compliance programs, including membership in
40 a best-practice organization;

41 3. The director shall select a market conduct action that is cost
42 effective for the department and the insurer, while still protecting the
43 insurance consumer.

44 4. The director shall take those steps reasonably necessary to
45 eliminate requests for information that duplicate information provided
46 as part of an insurer's annual financial statement, the annual market
47 conduct statement of the National Association of Insurance
48 Commissioners, or other required schedules, surveys, or reports that
49 are regularly submitted to the director, unless the information is state
50 specific, and coordinate market conduct actions and findings with
51 other states.

52 5. The director may issue a warrant for the conduct of an
53 examination if the director has cause to believe an insurer has engaged
54 in violations of section 375.144, RSMo, or, if identified through market
55 analysis, the following additional causes:

56 (1) Information obtained from a market conduct annual
57 statement, market survey or report of financial examination indicating
58 that the insurer is conducting the business of insurance without a
59 license or is engaged in a potential pattern of unfair trade practice in
60 violation of sections 375.930 to 375.948, RSMo, unfair claims settlement
61 practice in violation of sections 375.1000 to 375.1018, RSMo.

62 (2) A number of complaints against the insurer or a complaint
63 ratio sufficient to indicate conducting the business of insurance
64 without a license, or a potential pattern of unfair trade practice in
65 violation of sections 375.930 to 375.948, RSMo, or unfair claims
66 settlement practice in violations of sections 375.1000 to 375.1018,

67 RSMo. For the purposes of this section, a complaint ratio shall be
68 determined for each line of business.

69 (3) Information obtained from other objective sources, such as
70 published advertising materials indicating conducting the business of
71 insurance without a license, or evidencing a potential pattern of unfair
72 trade practice in violation of sections 375.930 to 375.948, RSMo, or
73 unfair claims settlement practice in violation of sections 375.1000 to
74 375.1018, RSMo.

75 (4) Information from other objective sources indicating patterns
76 of violations of provisions of this chapter, chapter 354, RSMo, or
77 chapters 375 to 385, RSMo, or rules promulgated thereunder, which are
78 likely to cause consumer harm.

374.909. 1. Market conduct actions taken as a result of a market
2 analysis shall focus on the general business practices and compliance
3 activities of insurers, rather than identifying infrequent or
4 unintentional random errors that do not cause consumer harm.

5 2. (1) The director is authorized to determine the frequency and
6 timing of such market conduct actions. The timing shall depend upon
7 the specific market conduct action to be initiated, unless extraordinary
8 circumstances indicating a risk to consumers require immediate action.

9 (2) If the director has information that more than one insurer is
10 engaged in common practices that may violate statute or regulations,
11 he or she may schedule and coordinate multiple examinations
12 simultaneously.

13 3. The insurer shall be notified of any practice or procedure
14 which is to be the subject of a market conduct action and shall be given
15 an opportunity to resolve such matters that arise as a result of a
16 market analysis to the satisfaction of the director through informal
17 resolution or curative order or other formal resolution under sections
18 374.046 to 374.049 before an examination warrant is executed by the
19 director. If the insurer has modified such practice or procedure as a
20 result of a market conduct action taken by the commissioner of another
21 state, the director shall accept appropriate documentation that the
22 insurer has satisfactorily modified the practice or procedure and made
23 similar modification to such practice or procedure in this state.

374.912. 1. When market analysis identifies a pattern of conduct
2 or practice by an insurer which requires further investigation, and less

3 intrusive market conduct actions identified in subsection 2 of section
4 374.906 are not appropriate, the director may conduct targeted, market
5 conduct examinations upon issuance of a warrant under subsection 5
6 of section 374.906 and in accordance with the NAIC Market Conduct
7 Uniform Examination Procedures and the Market Regulation Handbook
8 as adopted by rule, or procedures, adopted by rule, that are
9 substantially similar to the foregoing NAIC products.

10 2. If the insurer to be examined is not a domestic insurer, the
11 director shall communicate with and may coordinate the examination
12 with the insurance commissioner of the state in which the insurer is
13 organized.

14 3. Concomitant with the notification requirements established in
15 subsection 5 of this section, the director shall post notification on the
16 NAIC examination tracking system, or comparable NAIC product as
17 determined by the director, that a market conduct examination has
18 been scheduled.

19 4. The director may not conduct a comprehensive market
20 conduct examination more frequently than once every three years
21 unless otherwise provided by law. The director may waive conducting
22 a comprehensive market conduct examination based on market
23 analysis.

24 5. (1) Prior to commencement of a targeted on-site market
25 conduct examination, market conduct surveillance personnel shall
26 prepare a work plan and proposed budget. Such work plan shall be
27 provided to the company under examination.

28 (2) Market conduct examinations shall, to the extent feasible,
29 utilize desk examinations and data requests prior to a targeted on-site
30 examination.

31 (3) Market conduct examinations shall be conducted in
32 accordance with the provisions set forth in the NAIC Market Regulation
33 Handbook and the NAIC market conduct uniform examination
34 procedures, or procedures, adopted by rule, that are substantially
35 similar to the foregoing NAIC products.

36 (4) Prior to the conclusion of a market conduct examination, the
37 individual among the market conduct surveillance personnel who is
38 designated as the examiner-in-charge shall schedule an exit conference
39 with the insurer.

40 **6. Announcement of the examination shall be sent to the insurer**
41 **and posted on the NAIC's examination tracking system, or comparable**
42 **NAIC product, as determined by the director, as soon as possible but in**
43 **no case later than sixty days before the estimated commencement of the**
44 **examination. Such announcement shall contain:**

45 **(1) The name and address of the insurer being examined;**

46 **(2) The name and contact information of the examiner-in-charge;**

47 **(3) The reason for and the scope of the targeted examination;**

48 **(4) The date the examination is scheduled to begin;**

49 **(5) Identification of any personnel not employed by the**
50 **department who will assist in the examination, if known at the time the**
51 **notice is prepared;**

52 **(6) A time estimate for the examination;**

53 **(7) A budget and work plan for the examination and**
54 **identification of reasonable and necessary costs and fees that will be**
55 **included in the bill, if the cost of the examination is billed to the**
56 **company; and**

57 **(8) A request for the insurer to name its examination**
58 **coordinator.**

59 **7. If a targeted examination is expanded beyond the reasons**
60 **provided to the insurer in the notice of the examination required under**
61 **this section, the director shall provide written notice to the insurer**
62 **explaining the extent of the expansion and the reasons for the**
63 **expansion. The director shall provide a revised work plan to the**
64 **insurer before the beginning of any significantly expanded**
65 **examination, unless extraordinary circumstances indicating a risk to**
66 **consumers require immediate action.**

67 **8. The director shall conduct a pre-examination conference with**
68 **the insurer examination coordinator and key personnel to clarify**
69 **expectations thirty days prior to commencement of the examination.**

70 **9. The director shall use NAIC standard data request, or**
71 **comparable product, adopted by rule, that is substantially similar to**
72 **the foregoing NAIC product.**

73 **(1) A company responding to a director's request to product**
74 **information shall produce it as it is kept in the usual course of business**
75 **or shall organize and label it to correspond with the categories in the**
76 **demand.**

77 **(2) If a director's request does not specify the form or forms for**
78 **producing electronically stored information, a company responding to**
79 **the request must produce the information in a form or forms in which**
80 **the company ordinarily maintains it or in a form or forms that are**
81 **reasonably usable.**

82 **(3) A company responding to an information request need not**
83 **produce the same electronically stored information in more than one**
84 **form.**

85 **(4) A company responding to an information request need not**
86 **provide the electronically stored information from sources that the**
87 **company identifies as not reasonably accessible because of undue**
88 **burden or cost.**

89 **10. (1) The director shall adhere to the following time line,**
90 **unless a mutual agreement is reached with the insurer to modify the**
91 **time line:**

92 **(a) The director shall deliver the draft report to the insurer**
93 **within sixty days of the completion of the examination. Completion of**
94 **the examination shall be defined as the date the director confirms in**
95 **writing that the examination is completed.**

96 **(b) The insurer shall respond with written comments within**
97 **thirty days of receipt of the draft report.**

98 **(c) The director shall make a good faith effort to resolve issues**
99 **and prepare a final report within thirty days of receipt of the insurer's**
100 **written comments, unless a mutual agreement is reached to extend the**
101 **deadline. The director may make corrections and other changes, as**
102 **appropriate.**

103 **(d) The insurer shall, within thirty days, accept the final report,**
104 **accept the findings of the report, file written comments, or request a**
105 **hearing. The director may allow an additional thirty days if requested**
106 **by the insurer. Any such hearing request shall be made in writing and**
107 **shall be held in accordance with chapter 536, RSMo, and rules**
108 **promulgated by the director.**

109 **(2) The final written and electronic market conduct report shall**
110 **include the insurer's written response and any agreed-to or in text of**
111 **the examination report. The insurer is not obligated to submit a**
112 **response. References to specific individuals by name shall be limited**
113 **to an acknowledgment of their involvement in the conduct of the**

114 examination.

115 11. (1) Upon adoption of the examination report under
116 subsection 10 of this section, the director shall continue to hold the
117 content of the examination report as private and confidential for a
118 period of thirty days, except to the extent provided in subdivision (2)
119 of this subsection. During this time, the report shall not be subject to
120 subpoena and shall not be subject to discovery or admissible in
121 evidence in any private action, provided no court of competent
122 jurisdiction has ordered production. Thereafter, the director shall
123 open the report for public inspection, provided no court of competent
124 jurisdiction has stayed its publication. This section may not be
125 construed to limit the director's authority to use any final or
126 preliminary market conduct examination report, and examiner or
127 company work papers or other documents, or any other information
128 discovered or developed during the course of an examination in the
129 furtherance of any legal or regulatory action that the director, in the
130 director's sole discretion may deem appropriate.

131 (2) Nothing contained in sections 374.900 to 374.933 shall prevent
132 or be construed as preventing the director from disclosing the content
133 of an examination report, preliminary examination report or result, or
134 any matter relating thereto, to the staff within the department or the
135 insurance department of any other state or agency of the federal
136 government at any time, provided the agency or office receiving the
137 report of matters relating thereto agrees to hold it confidential and in
138 a manner consistent with sections 374.900 to 374.933.

 374.915. 1. Where the reasonable and necessary cost and fees of
2 a market conduct examination are to be assessed against the insurer
3 under examination, such costs and fees shall be consistent with that
4 otherwise authorized by law. Such costs and fees shall be itemized and
5 bills shall be provided to the insurer on a monthly basis for review
6 prior to submission for payment.

7 2. The director shall maintain active management and oversight
8 of examination costs and fees, including costs and fees associated with
9 the use of department personnel and examiners and with retaining
10 qualified contract examiners necessary to perform an examination. To
11 the extent the director retains outside assistance, the director shall
12 have in writing protocols that:

13 **(1) Clearly identify the types of functions to be subject to**
14 **outsourcing;**

15 **(2) Provide specific time lines for completion of the outsourced**
16 **review;**

17 **(3) Require disclosure of contract examiners' recommendations;**

18 **(4) Establish and utilize a dispute resolution or arbitration**
19 **mechanism to resolve conflicts with insurers regarding examination**
20 **costs and fees; and**

21 **(5) Require disclosure of the terms of the contracts with the**
22 **outside consultants that shall be used, specifically the costs and fees or**
23 **hourly rates that can be charged.**

24 **3. The director shall review and affirmatively endorse detailed**
25 **billings from the qualified contract examiner before the detailed**
26 **billings are sent to the insurer.**

27 **4. The director may contract in accordance with applicable state**
28 **contracting procedures, for such qualified contract actuaries and**
29 **examiners as the director deems necessary, provided that the**
30 **compensation and per diem allowances paid to such contract persons**
31 **shall not exceed one hundred twenty-five percent of the compensation**
32 **and per diem allowance for examiners set forth in the guidelines**
33 **adopted by the National Association of Insurance Commissioners,**
34 **unless the director demonstrates that one hundred twenty-five percent**
35 **is inadequate under the circumstances of the examination.**

374.918. 1. Except as otherwise provided by law, market conduct
2 **surveillance personnel shall have free and full access to all books and**
3 **records, employees, officers, and directors, as practicable, of the**
4 **insurer during regular business hours. An insurer utilizing a third-**
5 **party model or product for any of the activities under examination**
6 **shall cause, upon the request of market conduct surveillance personnel,**
7 **the details of such models or products to be made available to such**
8 **personnel. All documents, whether from a third party or any insurer,**
9 **including but not limited to working papers, third-party models or**
10 **products, complaint logs, and copies thereof, created, produced, or**
11 **obtained by or disclosed to the director or any other person in the**
12 **course of any market conduct actions made under sections 374.900 to**
13 **374.933, or in the course of market analysis by the director of the**
14 **market conditions of an insurer, or obtained by the NAIC as a result of**

15 any of the provisions of sections 374.900 to 374.933, shall be confidential
16 by law, shall not be subject to subpoena and shall not be subject to
17 discovery or admissible in evidence in any private civil action.

18 2. No waiver of any applicable privilege or claim of
19 confidentiality in the documents, materials, or information shall occur
20 as a result of disclosure to the director under this section.

21 3. Market conduct surveillance personnel shall be vested with
22 the power to issue subpoenas and examine insurance company
23 personnel under oath when such action is ordered by the director.

24 4. Notwithstanding the provisions of subsection 1 of this section,
25 in order to assist in the performance of the director's duties, the
26 director may:

27 (1) Share documents, materials, or other information, including
28 the confidential and privileged documents, materials, or information
29 subject to subsection 1 of this section, with other state, federal, and
30 international regulatory agencies and law enforcement authorities and
31 the NAIC and its affiliates and subsidiaries, provided that the recipient
32 agrees to and has the legal authority to maintain the confidentiality
33 and privileged status of the document, material, communication, or
34 other information;

35 (2) Receive documents, materials, communications, or
36 information, including otherwise confidential and privileged
37 documents, materials or information, from the NAIC and its affiliates
38 or subsidiaries, and from regulatory and law enforcement officials of
39 other foreign or domestic jurisdictions, and shall maintain as
40 confidential or privileged any document, material, or information
41 received with notice or the understanding that it is confidential or
42 privileged under the laws of the jurisdiction that is the source of the
43 document, material, or information; and

44 (3) Enter into agreements governing the sharing and use of
45 information consistent with this subsection.

374.921. 1. Market conduct surveillance personnel shall be
2 qualified by education, experience and, where applicable, professional
3 designations. The director may supplement the in-house market
4 conduct surveillance staff with qualified outside professional assistance
5 if he or she determines that such assistance is necessary.

6 2. Market conduct surveillance personnel have a conflict of

7 interest, either directly or indirectly, if they are affiliated with the
8 management, have been employed by, or own a pecuniary interest in
9 the insurer subject to any examination under sections 374.900 to
10 374.933 within the most recent five years prior to the use of the
11 personnel. This section shall not be construed to automatically
12 preclude an individual from being:

- 13 (1) A policyholder or claimant under an insurance policy;
- 14 (2) A grantee of a mortgage or similar instrument on the
15 individual's residence from a regulated entity if done under customary
16 terms and in the ordinary course of business;
- 17 (3) An investment owner in shares of regulated diversified
18 investment companies; or
- 19 (4) A settlor or beneficiary of a "blind trust" into which any
20 otherwise permissible holdings have been placed.

374.924. 1. No cause of action shall arise, nor shall any liability
2 be imposed against the director, the director's authorized
3 representatives or an examiner appointed by the director for any
4 statements made or conduct performed in good faith while carrying out
5 the provisions of sections 374.900 to 374.933.

6 2. No cause of action shall arise, nor shall any liability be
7 imposed against any person for the act of communicating or delivering
8 information or data to the director or the director's authorized
9 representative or examiner pursuant to an examination made under
10 sections 374.900 to 374.933, if the act of communication or delivery was
11 performed in good faith and without fraudulent intent or the intent to
12 deceive.

13 3. A person identified in subsection 1 of this section shall be
14 entitled to an award of attorney's fees and costs if he or she is the
15 prevailing party in a civil cause of action for libel, slander, or any
16 other relevant tort arising out of activities in carrying out the
17 provisions of sections 374.900 to 374.933 and the party bringing the
18 action was not substantially justified in doing so. For purposes of this
19 section a proceeding is "substantially justified" if it had a reasonable
20 basis in law or fact at the time that it was initiated.

21 4. This section does not abrogate or modify in any way any
22 common law or statutory privilege or immunity heretofore enjoyed by
23 any person identified in subsection 1 of this section.

374.927. 1. Fines and penalties imposed under sections 374.046
2 to 374.049 for conduct arising from market conduct actions under
3 sections 374.900 to 374.933 or other provisions of the law relating to
4 insurance shall be consistent, reasonable, and justified.

5 2. The director shall take into consideration actions taken by
6 insurers that maintain membership in best-practice organizations that
7 exist to promote high ethical standards of conduct in the marketplace,
8 and insurers that self-assess, self-report, and remediate problems
9 detected to mitigate fines levied under sections 374.900 to 374.933.

374.930. 1. The director shall collect and report market data to
2 the NAIC's market information systems, including the complaint
3 database system, the examination tracking system, and the regulatory
4 information retrieval system, or other comparable successor NAIC
5 products as determined by the director. In addition to complaint data,
6 the accuracy of insurer-specific information reported to the NAIC to be
7 used for market analysis purposes or as the basis for market conduct
8 actions shall be reviewed by appropriate personnel in the insurance
9 department and by the insurer.

10 2. Information collected and maintained by the insurance
11 department shall be compiled in a manner that meets the requirements
12 of the NAIC. After completion of any level of market analysis which
13 would require further market conduct action directed to a specific
14 insurer, the director shall verify with the insurer the accuracy of the
15 data in the analysis before proceeding.

16 3. (1) A company responding to a director's request to produce
17 information shall produce it as it is kept in the usual course of business
18 or shall organize and label it to correspond with the categories in the
19 demand.

20 (2) If a director's request does not specify the form or forms for
21 producing electronically stored information, a company responding to
22 the request must produce the information in a form or forms in which
23 the company ordinarily maintains it or in a form or forms that are
24 reasonably usable.

25 (3) A company responding to an information request need not
26 produce the same electronically stored information in more than one
27 form.

28 (4) A company responding to an information request need not

29 provide the electronically stored information from sources that the
30 company identifies as not reasonably accessible because of undue
31 burden or cost.

32 4. The director shall share information and coordinate the
33 insurance department's market analysis and examination efforts with
34 other states through the NAIC.

374.933. 1. At least once per year, or more frequently if deemed
2 necessary, the director shall make available in an appropriate manner
3 to insurers and other entities subject to the scope and jurisdiction of
4 Missouri's insurance laws, information on new laws and regulations,
5 enforcement actions, and other information the director deems
6 pertinent to ensure compliance with market conduct requirements.

7 2. The director shall designate a specific person or persons
8 within the department whose responsibilities shall include the receipt
9 of information from employees of insurers and licensed entities
10 concerning violations of laws, rules, or regulations by employers. Such
11 person or persons shall be provided with proper training on the
12 handling of such information, which shall be deemed a confidential
13 communication for the purposes of this section.

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